

ORIGINAL

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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JUN 13 1997

Federal Communications Commission  
Office of Secretary

MM Docket No. 87-268

In the Matter of )

Advanced Television Systems and Their )  
Impact Upon the Existing Television )  
Broadcast Service )

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PETITION FOR RECONSIDERATION

Red River Broadcast Corp., by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby seeks reconsideration of the Sixth Report and Order in this proceeding.<sup>1</sup> Red River asks that the Commission modify its allotment of digital television channels to two of Red River's television broadcast stations.

Red River operates Station KBRR(TV), Thief River Falls, Minnesota, on NTSC channel 10, which has been assigned DTV channel 57. Red River also holds a construction permit for new Station KDLV(TV), Sioux Falls, South Dakota, on NTSC channel 46, which has been assigned DTV channel 47. The Sixth Report and Order, however, fails to provide its methodology or its rationale for allotting these high UHF band DTV channels. These allotments are also unjustified because they impose significant costs on Red River and create potential UHF interference problems, all of which can be avoided by allotting lower DTV channels

<sup>1</sup>Public notice of the Sixth Report and Order appeared in the Federal Register on May 14, 1997. This petition is therefore timely.

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to the stations. Red River respectfully requests that the Commission do so on reconsideration of the Order.

At the outset, Red River submits that the Commission's adoption of the Table of DTV Allotments and accompanying rules, without also supplying the technical information needed to assess how the Commission made specific allotments or how those allotments could be changed, was improper. It is well-established that administrative agencies cannot act without also explaining the basis and rationale for their action. Here, the critical piece of information needed to calculate compliance with the new DTV regime -- Office of Engineering and Technology Bulletin No. 69 -- has not been released. Yet the new rules (e.g., 47 CFR § 73.622) rely on that Bulletin. Red River thus cannot determine how the allotment for its station was chosen, test the validity of the assumptions which underlay it, or evaluate with any confidence what alternative allotments might exist.<sup>2</sup> This defeats the fundamental purpose of notice and comment rulemaking.<sup>3</sup> The proper course would have been to defer adoption of the Sixth Report and Order until the Bulletin were also released.

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<sup>2</sup>These and other objections to the Commission's DTV allotments to Red River are detailed in the attached Engineering Statement of Cohen, Dippell & Everist.

<sup>3</sup>Numerous court decisions have confirmed the Commission's legal obligation to explain, and not hide, the factual basis for its actions. E.g., City of Brookings Municipal Telephone Co. v. FCC, 822 F.2d 1153 (D.C. Cir. 1987) (reversing FCC order which failed to illuminate the reasons for agency's decision and stating that FCC must set forth a "reasoned determination" as to how it reached its decision); Celcom Communications Corp. v. FCC, 789 F.2d 67 (D.C. Cir. 1986) (FCC must "offer a satisfactory explanation for its conclusion").

The allotments to Stations KBRR and KDLT are also themselves unjustified and should be modified. The attached engineering statement of Cohen Dippell & Everist details the problems with the allotments issued to Red River's stations.

Station KBRR. The DTV Table of Allotments imposes on KBRR a radically higher channel, forcing it to move from 10 to 57. This decision is flawed for three reasons. First, it will impose significantly higher costs on Red River than on other stations, because of the need to purchase a much larger, higher power transmitter and antenna. The substantially higher costs of DTV UHF operation have been well-documented in the record of this proceeding. While such an allotment might be warranted should no other channel be available, there is no evidence in the Sixth Report and Order to show this is the case.

Second, no other station in Minnesota was assigned a channel higher than channel 50. This disparate burden on KBRR cannot be explained by any information provided by the Sixth Report and Order, and is thus arbitrary and improper. The choice of such a high channel appears particularly questionable because Thief River Falls has no other licensed television broadcast stations at all, and lies in a sparsely populated area of western Minnesota. There are multiple other channels which appear to be available. Because, however, the Commission has failed to issue OET Bulletin No. 69, Red River cannot yet identify an alternative channel. It reserves the right to supplement this Petition once the Bulletin is released.

Third, KBRR, unlike any station in Minnesota, has been given a DTV allotment outside the "core" spectrum. This means that it must eventually

relinquish its DTV channel. Thus, even if it constructs a DTV facility on channel 57, it must subsequently abandon that channel, and construct a second DTV facility on channel 10, its NTSC channel. Unless it pursues that course, KBRR will be unable to provide DTV service. This places it at a unique, unjustified and hence unlawful disadvantage, because no other station serving the state will be required to return its DTV channel.

Station KDLV. The Sixth Report and Order allots channel 47 to KDLV, even though its authorized NTSC channel is 46. This allocation conflicts with the evidence in the record of this proceeding that demonstrates potential interference from adjacent NTSC/DTV operation in the UHF band. See also the Engineering Statement of Cohen, Dippell & Everist. It might have been necessary to assign adjacent NTSC/DTV channels in congested locations, or along the east coast or west coast, where multiple large markets converge. This is not the case, however, in Sioux Falls, which has only six allotments and is hundreds of miles from any top-100 television market. There is thus no apparent basis, let alone the express explanation required by law, as to why KDLV was assigned an adjacent channel. Reconsideration is thus clearly warranted. Again, however, because the Commission has failed to issue OET Bulletin No. 69, Red River cannot at this time supply an alternative channel. It reserves the right to supplement this Petition once the Bulletin is available.<sup>4</sup>

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<sup>4</sup>The attached Engineering Statement of Cohen Dippell & Everist identifies additional issues concerning the DTV allotments to the Red River stations. First, Station KDLT, Mitchell, South Dakota, holds a construction permit to modify its

For the above reasons, the Commission's Sixth Report and Order should be modified to specify lower DTV allotments for KBRR, Thief River Falls, Minnesota, and KDLV, Sioux Falls, South Dakota.

Respectfully submitted,

RED RIVER BROADCAST CORP.

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Its Attorneys

Dated: June 13, 1997

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facilities and change its tower location (File No. BPCT-941227KH). The Table of Allotments does not reference the authorized new location. Second, Station KJRR, Jamestown, North Dakota, has been assigned DTV channel 14. Given the remote location of this station, any interference to and from land mobile operation should be made the responsibility of land mobile users.

**ENGINEERING STATEMENT  
IN SUPPORT OF  
PETITION FOR RECONSIDERATION  
MM DOCKET 87-268  
IN BEHALF OF  
RED RIVER BROADCASTING CORP.**

JUNE 1997

**COHEN, DIPPELL AND EVERIST, P.C.  
CONSULTING ENGINEERS  
RADIO AND TELEVISION  
Washington, DC**

COHEN, DIPPELL AND EVERIST, P. C.

City of Washington     )  
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District of Columbia )

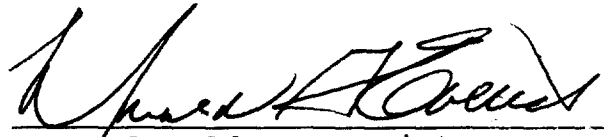
Donald G. Everist, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer, a Registered Professional Engineer in the District of Columbia, and is President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio - Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005;

That his qualifications are a matter of record in the Federal Communications Commission;

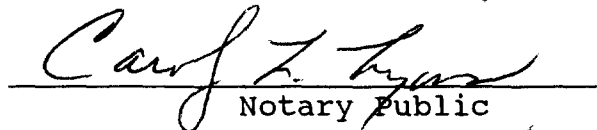
That the attached engineering report was prepared by him or under his supervision and direction and

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts he believes them to be true.



Donald G. Everist  
District of Columbia  
Professional Engineer  
Registration No. 5714

Subscribed and sworn to before me this 13<sup>th</sup> day of June, 1997.

  
Notary Public

My Commission Expires: 2/28/98

This engineering statement has been prepared on behalf of Red River Broadcasting Corp. ("Red River"), licensee of Station KVRN(TV), Fargo, North Dakota and its satellite stations and licensee of Station KDLT(TV) ("KDLT"), Mitchell, South Dakota. This statement is in support of a Petition for Reconsideration for the Sixth Report and Order, MM Docket No. 87-268<sup>1</sup> ("Report and Order").

Red River has authorized this firm to review the various aspects of the Report and Order as it applies to its stations. This study was conducted on the impact of the Report and Order on Red River's current NTSC service area and the interference which could result to existing service by new digital operations and the service replication by the assigned digital television ("DTV") operation.

### CONCERNS

The Commission in Section 73.622 and Section 73.623, specifies that OET Bulletin 69 will provide the details of its calculation methodology for service and interference determinations. Furthermore, the Report and Order does not disclose how the DTV assignments were made nor has any formal clarifying information been supplied.

Until such specific information is available, no meaningful technical evaluations can be performed. These evaluations will have a direct impact on equipment decisions such

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<sup>1</sup>MM Docket No. 87-268, "In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service," adopted April 3, 1997.



as antenna and the DTV power to be used during the transition period. The Commission's DTV criteria needs to be well understood before a meaningful station DTV implementation plan can be developed.

Red River operates the following stations:

**KVRR(TV), FARGO, NORTH DAKOTA**

	NTSC			DTV		
	<u>Channel</u>	<u>ERP</u>	<u>HAAT</u> <u>Meters</u>	<u>Channel</u>	<u>ERP</u>	<u>HAAT</u> <u>Meters</u>
KVRR(TV)	15	4170	379	19	188.1	379
KJRR(TV)*	7	316	135	14	980	135
KNRR(TV)*	12	316	427	15	465	427
KBRR(TV)*	10	123	183	57	663	183

\* Satellite

Several observations can be made. KJRR has been assigned DTV Channel 14. Red River requests that any interference to and from land mobile operations below the adjacent 6 MHZ be the responsibility of land-mobile users since the generally remote area should not pose an unusual land-mobile deployment. KBRR has been assigned DTV Channel 57. Red River requests that the Commission reconsider this allocation since it is out of the spectrum core. Red River believes that a channel within the core spectrum should be available due to area being separated from high concentration of DTV allocation activity.

Red River is encouraged by the coordination effort with Canada. These four TV facilities face uncertainty until the U.S. Canadian television coordination concluded.

### **KDLT, MITCHELL, SOUTH DAKOTA**

This station operates on NTSC Channel 5 with maximum power NTSC facilities. It has been assigned DTV Channel 26. KDLT in BPCT-941227KH has been authorized to move this facility west. In addition, KDLT has been authorized to construct a station KDLV(TV) , Channel 46, BPCT-941227KL to serve Sioux Falls, South Dakota. Specifically, NTSC Channel 46 has been authorized. DTV Channel 47 has been paired with this facility.

### **EVALUATION ISSUE**

As discussed above, in Section 73.622, the Commission indicates that OET Bulletin 69 will provide guidance for evaluating the coverage areas using the Longley-Rice methodology. Similarly, Section 73.623 indicates OET Bulletin 69 will provide guidance for evaluating interference. Since Commission has not released OET Bulletin 69, KDLT cannot perform any comprehensive studies until that information is available. Furthermore, the DTV facility specified as a companion channel for KDLT is for the licensed facility and not for the construction permit facility, BPCT-941227KH. KDLT is proceeding to promptly construct the construction permit facility. Therefore, it is

requested that the Commission redetermine the KDLT DTV facility to correspond to the facilities authorized in its construction permit.

As indicated above, the DTV channel is first-adjacent to its NTSC operation. Based upon tests performed in October 1996 by the Advanced Television Technology Center. KDLT believes that the first-adjacent channel criteria adopted for the Commission's model may be overly optimistic. It is understood that all first-adjacent channel ratios used in the DTV model are based upon data gathered using a linear (Class A) testbed. With the relatively high average, UHF powers required by most DTV facilities can only be developed at this time with RF amplifiers operating in the Class A-B mode. Generating high levels of RF in any device that is not perfectly linear will result in intermodulation products which will require proper engineering consideration. Similarly, non-linear propagation path effects such as multipath are engineering factors that need to be addressed by providing an adequate margin for the DTV receiver system. KDLT urges the Commission to revisit these issues and modify where necessary these basic allocation criteria.

#### **OTHER ISSUES**

While Red River owns the towers from which these facilities operate, it may be necessary for an interim period to side-mount its DTV antenna on the tower. However, there is no assurance that a side-mounted UHF antenna will replicate the pattern that is

envisioned by the Commission for the DTV operation. Obviously if pattern replication is placed in doubt, the replicated service area projected by the Commission cannot be achieved.

### **POST TRANSITION**

Red River desires to revert its DTV facilities to its currently authorized NTSC facilities. Therefore, Red River requests that only new DTV stations be authorized at distances that are equal to or greater than the specified by Section 73.623(d).

### **SUMMARY**

Without full knowledge of the Commission's calculation methodology for service and interference and the DTV frequency assignments prevents Red River from making critical independent evaluation of what impact any DTV operation may have on its NTSC current service areas and whether Red River can achieve service replication by its assigned DTV operations.